IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1627/2006
(Kailash Chandra Vs. State of Rajasthan)

Date of Order : 12/12/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Bharat Shrimali for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

Notice for final disposal is accepted by learned public prosecutor for the State.

With the consent of learned counsel for the parties, the matter is finally heard and decided at the admission stage.

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 23.8.2006 passed by Additional Sessions Judge No.1, Udaipur (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dated 9.12.2004 passed by Judicial Magistrate, Udaipur (for short 'the trial court' hereinafter) framing charge for the offence under Section 420 IPC against the petitioner, was dismissed in default.

I have carefully gone through the order impugned dated 23.8.2006. The revisional court has not dismissed the revision petition on merit but only for non-appearance of the accused petitioner. It is settled law that when the matter is brought to the Court in criminal side more particularly either against conviction or order framing charge, or cognizance, then in absence of counsel, the matter can be decided but has to be decided on merit and not in default. There is no provision in the Code of Criminal Procedure, 1973 like Order 9 CPC for restoration and therefore, such matters are required to be decided on merit. In this view of the matter, the order impugned appears to be erroneous and deserves to be set aside.

Consequently, the criminal misc. petition is allowed. The order impugned dated 23.8.2006 passed by the revisional court is set aside and the revision petition filed by the petitioner is restored. The revisional court to hear and decide the revision petition on merit. The petitioner to appear before the revisional court on 16.1.2007.

(H.R.PANWAR),J.

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